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Federal Communications Commission

DA 97-1696

FCC MAIL SECTION  
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Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations.

(Old Forge and Newport Village, New York)

MM Docket No. 97-179  
RM-9064

**NOTICE OF PROPOSED RULE MAKING**

Adopted: August 6, 1997

Released: August 15, 1997

Comment Date: October 6, 1997

Reply Comment Date: October 21, 1997

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by 21st Century Radio Ventures, Inc. ("petitioner"), requesting the reallotment of Channel 259A from Old Forge, New York, to Newport Village, New York, and the modification of petitioner's construction permit (BPH-940203MC) to specify Newport Village as the station's community of license. The reallotment would provide Newport Village with its first local aural service.

2. Petitioner states that Newport Village has all the attributes of a community. Newport Village, with a 1995 U.S. Census population of 676 persons, is an incorporated community within Herkimer County. According to the petitioner, it has its own locally elected government (mayor and two village trustees), fire department and public library. In addition, Newport Village collects a separate village tax and school taxes. Old Forge, which was listed in the 1980 U.S. Census as a Census Designated Place ("CDP") with a population of 1,061 people, is not listed in the 1990 U.S. Census.<sup>1</sup> Neither Old Forge nor Newport Village are located within any Urbanized Area and petitioner states that it will not place a 70 dBu signal over 50% or more of any Urbanized Area.

3. It contends that the public interest would be served by reallotting Channel 259A to Newport Village since it could provide the community with its first local aural service. In addition, the change of community would enable the station to increase the population it serves within its 1 mV/m contour from its present 2,889 persons to 168,889 persons. Petitioner submits that, as an unbuilt station, there is no service which the residents of Old Forge have come to rely on. Further, it points out that the Commission has, in the past, granted proposals such as this

<sup>1</sup> According to the 1995 Rand McNally Commercial Atlas, Old Forge has a permanent population of 1,500 people, and a summer population of 3,000 people.

one, stating that the removal of an unbuilt station "does not present the parallel concerns with loss of service represented by the removal of an operating station, as it does not constitute a service that the public has become reliant upon." Avra Valley, Comobabi, Florence, Oracle, Oro Valley and San Carlos, Arizona, 12 FCC Rcd 1202, 1206 (1997). See also, Sanibel and San Carlos Park, Florida, 10 FCC Rcd 7215 (1995); Pawley's Island and Atlantic Beach, South Carolina, 8 FCC Rcd 8657 (1993); and Glencoe and Le Sueur, Minnesota, 7 FCC Rcd 7651 (1992). Further, it submits that the reallotment of Channel 259A will not deprive Old Forge of its sole local potential aural service because the community has a second FM channel allotted to it for which an application is pending.<sup>2</sup>

4. A staff engineering study has confirmed that petitioner's station, if reallotted as requested, will not serve the nearby Utica-Rome Urbanized Area with a 70 dBu signal, although the proposed station will cover the most populous part of the Urbanized Area with a 60 dBu signal. Therefore, we will not require that the petitioner demonstrate that Newport Village is sufficiently independent of the central city to justify a first local service preference. See Headland, Alabama, and Chattahoochee, Florida, 10 FCC Rcd 1052 (1995). However, a staff engineering study shows that the deletion of Channel 259A from Old Forge will result in the creation of both a white and gray area totaling 59 square kilometers with a population of 229 people. Further, the staff study shows that not all of the population within the white and gray areas will be served by the proposed new station on Channel 231A, if it is ultimately activated at Old Forge. While it is true that the Commission does not have the exact same concerns regarding loss of service where, as here, the station is unbuilt, Channel 259A at Old Forge does represent the community's sole local potential service at this time. Therefore, to aid us in determining whether the reallotment would serve the public interest, petitioner is requested to provide a study detailing the reception services within the gain area if Channel 259A is reallotted to Newport Village.

#### Technical Summary

5. Channel 259A can be allotted to Newport Village in compliance with the Commission's minimum distance separation requirements with a site restriction of 10 kilometers (6.2 miles) northwest to avoid a short-spacing to Station WTKW, Channel 258A, Bridgeport, New York, and Station WRVE, Channel 258B, Schenectady, New York.<sup>3</sup> Newport Village is located within 320 kilometers (200 miles) of the U.S.-Canadian border. Therefore, the Commission must obtain the concurrence of the Canadian government in this proposal.

6. We believe petitioner's proposal warrants consideration since the reallotment of

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<sup>2</sup> Channel 231A was allotted to Old Forge by Report and Order, 3 FCC Rcd 6317 (1988). An application has been filed by Lyle Robert Evan (Filed No. 961212MF) which the Commission has accepted as tendered for filing.

<sup>3</sup> The coordinates for Channel 259A at Newport Village are 43-15-43 North Latitude and 75-05-02 West Longitude.

Channel 259A from Old Forge to Newport Village, New York, could provide the latter community with its first local aural transmission service and enable petitioner's station to increase the population which it will serve. As requested, we also propose to modify petitioner's construction permit to specify Newport Village as its community of license. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 259A at Newport Village.

7. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Newport Village, New York	--	259A
Old Forge, New York	231A, 259A	231A

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

9. Interested parties may file comments on or before October 6, 1997, and reply comments on or before October 21, 1997, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

James L. Primm  
President and Counsel  
21st Century Radio Ventures, Inc.  
530 Wilshire Blvd., Suite 301  
Santa Monica, CA 90401  
(Petitioner)

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

11. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from

the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

## FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

Attachment: Appendix

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APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239) at its headquarters, 1919 M Street, N.W., Washington, D.C.